Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

NO. 73-1708

KEVIN J. BURNS, Individually and in his capacity as Commissioner of the State of Iowa Department of Social Services; and

MICHAEL RYAN, Individually and in his capacity as Director of the Scott County Department of Social Services,

Petitioners,

vs.

LINDA ALCALA, JANE DOE and JOAN ROE, Individually and on behalf of all other persons similarly situated,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 15, 1974

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DATE	
1973	
April 4	Complaint, Re: *Alcala*
May 9	Answer, Re: *Alcala*
May 16	Complaint, Re: *Doe and Roe*
May 16	Order [consolidating Civil No. 73-86-2, *Alcala*, with Civil No. 73-110-2, *Doe and Roe*]
May 29	Amendment to Answer, Re: *Alcala*
May 29	Answer, Re: *Doe and Roe*
July 31	Findings of Fact, Conclusions of Law and Order for Judgment
July 31	Judgment
August 2	Defendants' Notice of Appeal
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August 24	Order Clarifying Misprint in Court's Order of July 31, 1973

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT:

DATE	
1973	
August 27	Application for Stay of Judgment
August 27	Memorandum in Resistance to Application for Stay of Judgment
August 29	Addendum to Memorandum in Resistance to Application for Stay of Judgment
September 6	Amendment to Application for Stay of Judgment and Request for Oral Hearing
September 7	Order [denying stay of judgment]
September 17	Application for Stay of Judgment Pending Appeal and Request for Oral Hearing [filed in the United States Supreme Court]
September 21	Memorandum in Resistance to Application for Stay of Judgment Pending Appeal [filed in the United States Supreme Court]

October 9	Order [of United States Supreme Court] granting Stay of Judgment pending appeal in Circuit Court
1974	
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March 29	Judgment
April 4	Motion for Stay of Mandate
April 8	Resistance to Motion for Stay of Mandate
April 15	Order [staying mandate]

On the 4th day of April, 1973, the following COMPLAINT was filed in *Alcala* in the United States District Court, Southern District of Iowa:

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF IOWA

CENTRAL DIVISION

LINDA ALCALA, Individually and on behalf of all other persons similarly situated, Plaintiff, vs. KEVIN J. BURNS, Individually and in his capacity as Acting Commissioner of the State of Iowa Department of Social Services; and MICHAEL RYAN, Individually and in his capacity as Director of the Scott County Department of Social Services, Defendants.	)	CIVIL NO. 73-86-2

*** ***

I.

Preliminary Statement

1. Plaintiff, individually and on behalf of all other persons similarly situated, seeks to have this Court declare invalid and enjoin the Defendants' actions as being in violation of a federal statute, 42 U.S.C.A. § 606(a). The Defendants have interpreted the Iowa State Department of Social Service Employees Manual, Section V, Chapter 5, pages 1, 4, 9, and 28 to exclude from the definition of "child," and "unborn child," when the fact of pregnancy has been determined by medical diagnosis. Thus the Plaintiff's application for AFDC assistance has been refused on the ground that there is "no eligible child in the household." The Defendants' actions are challenged on the grounds that they are in conflict with the guarantees contained in the Fifth and Fourteenth Amendments of the Constitution of the United States, and with the Social Security Act itself.

II.
Jurisdiction

2. Jurisdiction is conferred in this Court by 28 U.S.C. §1343(3), which provides for original jurisdiction of this Court in suits to redress the deprivation under color of state law of any right, privilege, or immunity secured by the Constitution of the United States or by an Act of Congress providing for equal civil rights of all persons within the jurisdiction of the United States.

3. This action is authorized by and brought under 42 U.S.C.A. § 1983, which provides a cause of action for the deprivation under color of law of rights, privileges or immunities guaranteed by the Constitution and laws of the United States.

4. Declaratory relief is authorized by 28 U.S.C.A. §§ 2201 - 2202, and by Rule 57 of the Federal Rules of Civil Procedure.

III.
Parties

5. The named Plaintiff, Linda Alcala, is currently pregnant and is not married.

6. Plaintiff is and has been during all relevant periods a resident of Scott County, Iowa.

7. Defendant, James N. Gillman, is the Commissioner of the Iowa State Department of Social Services.

8. Defendant, Michael Ryan, is the Director of the Scott County Department of Social Services.

9. The Defendants are charged under the statutes of the United States, 42 U.S.C.A. § 602(a), and the statutes of the State of Iowa, Code of Iowa §§ 217.1, 234.6, 234.12, with the enforcement, operation, and executions of laws pertaining to AFDC, and the Defendants' interpretation of 42 U.S.C.A. § 606(a) is herein challenged as being in conflict with the Constitution and statutes of the United States.

IV.
Class Action

10. The named Plaintiff brings this action on her own behalf, and on behalf of all other persons similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure. The members of the class similarly situated are expectant mothers who are denied AFDC payments by reason of the Defendants' interpretation of 42 U.S.C.A. § 606(a) so as to not include an unborn child within the term "dependent child."

11. The requirements of Rule 23 are met in that the class is so numerous that joinder of all members is impractical, there are questions of law and fact common to the class, the claims of the representative parties will fairly and adequately protect the interests of the class, and the parties opposing the class have acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory

relief with respect to the class as a whole.

V.
Facts

12. Title 42 U.S.C.A. §606(a) defines "dependent child" as "a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent and who is living with his father, mother . . . and (2) who is (A) under the age of eighteen or (B) under the age of twenty-one and (as determined by the state in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment."

13. The Department of Health, Education and Welfare's Handbook of Public Assistance Administration, Part IV, § 3142 has stated, since 1946, that "child" as used in 42 U.S.C.A. §606(a) includes "unborn child." On February 27, 1971, this was modified in 45 C.F.R. § 233.90(c)(2)(ii) as follows:

> (c)(2) Federal financial participation is available in: . . .
> (ii) Payments with respect to an unborn child when the fact of pregnancy has been determined by medical diagnosis; . . .

14. The Employees Manual of the Iowa Department of Social Services does not explicitly say an unborn child is ineligible for AFDC but it has been so interpreted by the Scott County Department of Social Services. The relevant Sections from which this inference has been made are:

> A. Section V, Chapter 5, page 1: "Aid to Dependent Children may be paid for a child under the age of 16. . . ."
> B. Section V, Chapter 5, page 4: "the child of an unwed mother meets the eligibility requirements of deprivation. The child is entitled to assistance and medical expenses when it meets the other eligibility requirements."
> D. Section V, Chapter 5, page 28: "the eligible group in aid to Dependent Children shall include the eligible children . . ."

15. Title 42 U.S.C.A. § 602(a) provides that state and local agencies will administer the AFDC program.

16. Plaintiff's child is due in July, 1973.

17. Plaintiff is currently only able to work approximately ten hours per week because of her condition and her employer has indicated he will no longer be able to continue her employment past April 1, 1973.

18. Plaintiff has no savings and currently has weekly income of $15.

19. Because of her indigency, Plaintiff is unable to provide adequately for herself or prepare adequately for the birth of her child.

20. Plaintiff would be eligible for AFDC payments if her child had

already been born.

21. Plaintiff applied for AFDC payments to the Department of Social Services, Scott County, on February 22, 1973.

22. On March 16, 1973, Plaintiff's application was rejected on the grounds that there was "no eligible child in the household."

23. Plaintiff appealed the denial of AFDC payments on March 22, 1973; that appeal will not be heard until approximately May 10, 1973.

24. If Plaintiff were to receive AFDC payments, she would receive $151 per month.

25. Because Plaintiff has been denied AFDC payments, Plaintiff has suffered and will continue to suffer irreparable injury, both to herself and to her unborn child, due to both the lack of proper nutrition she is receiving and her inability to adequately prepare for her baby. Said irreparable injury will continue unless Defendants are enjoined from denying Plaintiff AFDC payments.

26. As a result of the events set forth in Paragraphs 18 through 25 of this Complaint, Plaintiff has suffered actual damages at the rate of $151 per month up to the date of this filing of not less than $200.

VI.
Causes of Action

27. FOR A FIRST CAUSE OF ACTION, Plaintiff states that the actions of the Defendants by their interpretation of 42 U.S.C.A. § 606(a) and the Employees Manual violate Plaintiff's rights to due process and equal protection guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and outlined specifically in *Stanley v. Illinois*, _____ U.S. _____, 92 S. Ct. 1208 (1972), in that said actions constitute an invalid conclusive presumption that Plaintiff is not a needy person with a child.

28. FOR A SECOND CAUSE OF ACTION, Plaintiff states that the actions of Defendants and the Defendants' interpretation of 42 U.S.C.A. § 606(a) and the Employees Manual, violate the Plaintiff's right to equal protection of the laws under the Fourteenth Amendment to the United States Constitution in that:

A. They deny AFDC eligibility to an applicant who is expecting a child and the fact of pregnancy has been determined by medical diagnosis;

B. This creates two classes of persons with regard to eligibility for AFDC eligibility;

C. The first class consists of needy women who have given birth to a child;

D. The second class consists of needy women who have had their pregnancy determined by medical diagnosis but who have not yet given birth to their child;

E. The first class of women are eligible for AFDC payments while the second class is not; and

F. There is no adequate governmental justification for this classification.

29. FOR A THIRD CAUSE OF ACTION, Plaintiff states that actions of the Defendants violate the Supremacy Clause and federal statutory law according to the rules of construction laid down by the United States Supreme Court in *King v. Smith*, 392 U.S. 390 (1968); *Townsend v. Swank*, 404 U.S. 282 (1971), and *Carleson v. Remillard*, _____ U.S. _____, 92 S. Ct. 1932 (1972), in that they have restricted eligibility for AFDC benefits to exclude persons eligible under federal statutes and regulations, namely 42 U.S.C.A. § 606(a) and 45 C.F.R. § 233.90(c)(2)(ii).

VII.
Prayer for Relief

WHEREFORE, Plaintiff respectfully prays on behalf of herself and all others similarly situated that the Court:

A. Assume jurisdiction of this cause, and promptly set this case down for hearing;

B. Determine by order prusuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure that this action be maintained as a class action;

C. Pending a hearing and determination by this Court, grant a Temporary Restraining Order pursuant to Rule 65 of the Federal Rules of Civil Procedure restraining Defendants, their successors in office, agents and employees, and all other persons in active concert and participation with them, from continuing to cause irreparable harm to the Plaintiff by refusing to grant AFDC assistance in the amount to which Plaintiff is entitled on the ground that Plaintiff's unborn child is not a "dependent child";

D. Enter a declaratory judgment pursuant to 28 U.S.C.A. §§ 2201-2202 and Rules 54, 57, and 58 of the Federal Rules of Civil Procedure declaring Defendants' actions in their interpretation of the Employees Manual to be invalid on the grounds that they violate 42 U.S.C.A. § 606(a), the Supremacy Clause and the Fifth and Fourteenth Amendments to the Constitution of the United States;

E. Enter a preliminary and permanent injunction, pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining Defendants and their successors in office, agents and employees, and all other persons in active concert and participation with them from refusing to grant Plaintiff AFDC assistance in the amounts to which they are entitled on the grounds that the Plaintiff's unborn child does not constitute a "dependent child";

F. Grant the Plaintiff monetary damages in the amount of $151 per month, which is not less than $200 as of the date of this filing, for assistance wrongfully withheld;

G. Pursuant to Rule 54(d) of the Federal Rules of Civil Procedure allow Plaintiff costs herein;

H. Grant additional or alternative relief as may seem to this Court to be just, proper, and equitable.

Respectfully submitted,

s/ Plaintiffs' Counsel

(Certificate of service omitted in printing)

On the 9th day of May, 1973, the following ANSWER was filed in *Alcala* in the United States District Court, Southern District of Iowa:

(Title omitted in printing)

COME NOW the Defendants and for Answer to Plaintiff's Complaint state:

1. That the Defendants admit the allegations contained in Paragraphs one (1), five (5), six (6), seven (7), eight (8), nine (9), twelve (12), fourteen (14), fifteen (15), twenty (20), twenty-one (21), twenty-two (22), and twenty-three (23) of Plaintiff's Complaint;

2. That Defendants deny the allegations contained in Paragraphs two (2), three (3), four (4), ten (10), eleven (11), thirteen (13), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight A (28A), twenty-eight B (28B), twenty-eight C (28C), twenty-eight D (28D), twenty-eight F (28F), and twenty-nine (29) of Plaintiff's Complaint;

3. That Defendants are without sufficient knowledge as to the truth of the allegations contained in Paragraphs sixteen (16), seventeen (17), eighteen (18) and nineteen (19) of Plaintiff's Complaint and therefore deny the same.

WHEREFORE, Defendants PRAY that Plaintiff's Complaint be dismissed.

s/ Defendants' Counsel

(Certificate of service omitted in printing)

On the 16th day of May, 1973, the following COMPLAINT was filed in *Doe and Roe* in the United States District Court, Southern District of Iowa:

JANE DOE AND JOAN ROE,

Plaintiffs,

vs.

KEVIN J. BURNS, Individually and in his capacity as Acting Commissioner of the State of Iowa Department of Social Services; and MICHAEL RYAN, Individually and in his capacity as Director of the Scott County Department of Social Services,

Defendants.

CIVIL NO.

73-110-2

I.
Preliminary Statement

1. Plaintiffs seek to have this Court declare invalid and enjoin the Defendants' actions as being in violation of a federal statute, 42 U.S.C.A. § 606(a). The Defendants have interpreted the Iowa State Department of Social Services Employees Manual, Section V, Chapter 5, pages 1, 4, 9, and 28 to exclude from the definition of "child," an "unborn child," when the fact of pregnancy has been determined by medical diagnosis. Thus the Plaintiffs' applications for AFDC assistance have been refused on the ground that there is "no eligible child in the household." The Defendants' actions are challenged on the grounds that they are in conflict with the guarantees contained in the Fifth and Fourteenth Amendments to the Constitution of the United States, and with the Social Security Act itself.

II.
Jurisdiction

2. Jurisdiction is conferred on this Court by 28 U.S.C. § 1343(3), which provides for original jurisdiction of this Court in suits to redress the deprivation under color of state law of any right, privilege, or immunity secured by the Constitution of the United States or by an Act of Congress providing for equal civil rights of all persons within the jurisdiction of the United States.

3. This action is authorized by and brought under 42 U.S.C.A. § 1983, which provides a cause of action for the deprivation under color of law of rights, privileges or immunities guaranteed by the Constitution and laws of the United States.

4. Declaratory relief is authorized by 28 U.S.C.A. §§ 2201 - 2202, and by Rule 57 of the Federal Rules of Civil Procedure.

III.
Parties

5. The named Plaintiffs, Jane Doe and Joan Roe, are currently pregnant. Both Plaintiffs bring this suit under assumed names to avoid publicity concerning them and their families.

6. Plaintiffs are and have been during all relevant periods residents of Scott County, Iowa.

7. Defendant, Kevin J. Burns, is the Acting Commissioner of the Iowa State Department of Social Services.

8. Defendant, Michael Ryan, is the Director of the Scott County Department of Social Services.

9. The Defendants are charged under the statutes of the United States, 42 U.S.C.A. § 602(a), and the statutes of the State of Iowa, Code of Iowa §§ 217.1, 234.6, 234.12, with the enforcement, operation, and execution of laws pertaining to AFDC, and the Defendants' interpretation of 42 U.S.C.A. § 606(a) is herein challenged as being in conflict with the Constitution and statutes of the United States.

IV.
Facts

10. Title 42 U.S.C.A. § 606(a) defines "dependent child" as

> a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent and who is living with his father, mother . . . and (2) who is (A) under the age of eighteen or (B) under the age of twenty-one and (as determined by the state in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment.

11. The Department of Health, Education and Welfare's Handbook of Public Assistance Administration, Part IV, § 3142 has stated, since 1946, that "child" as used in 42 U.S.C.A. § 606(a) includes "unborn child." On February 27, 1971, this was codified in 45 C.F.R. § 233.90(c)(2)(ii) as follows:

> (c)(2) Federal financial participation is available in: . . .
> (ii) Payments with respect to an unborn child when the fact of pregnancy has been determined by medical diagnosis; . . .

12. The Employees Manual of the Iowa Department of Social Services does not explicitly say an unborn child is ineligible for AFDC but it has been so interpreted by the Scott County Department of Social Services. The relevant sections from which this inference has been made are:

> A. Section V, Chapter 5, page 1: Aid to Dependent Children may be paid for a child under the age of 16. . . .

> B. Section V, Chapter 5, page 4: the child of an unwed mother meets the eligibility requirements of deprivation. The child is entitled to assistance and medical expenses when it meets the other eligibility requirements."
>
> D. Section V, Chapter 5, page 28: the eligible group in aid to Dependent Children shall include the eligible children. . .

13. Title 42 U.S.C.A. § 602(a) provides that state and local agencies will administer the AFDC program.

14. Plaintiff Roe's child is due in July, 1973, and Plaintiff Doe's child is due in November, 1973.

15. Plaintiffs are currently unable to work because of their conditions.

16. Plaintiffs have no savings and no current incomes.

17. Because of their indigency, Plaintiffs are unable to provide adequately for themselves or prepare adequately for the births of their children.

18. Plaintiffs would be eligible for AFDC payments if their children had already been born.

19. Plaintiff Roe applied for AFDC assistance to the Department of Social Services, Scott County, on April 14, 1973; Plaintiff Doe applied on April 27, 1973.

20. On April 16, 1973, Plaintiff Roe's application was rejected on the ground that there was "no eligible child in the household," and on May 3, 1973, Plaintiff Doe's application was rejected on the ground that there was "no eligible child in the household."

21. If Plaintiffs were to receive AFDC payments, they would each receive $151 per month.

22. Because Plaintiffs have been denied AFDC payments, Plaintiffs have suffered and will continue to suffer irreparable injury, both to themselves and to their unborn children, due to both the lack of proper nutrition they are receiving and their inability to adequately prepare for their babies. Said irreparable injuries will continue unless Defendants are enjoined from denying Plaintiffs AFDC payments.

23. As a result of the events set forth in Paragraphs 16 through 22 of this Complaint, Plaintiffs have suffered actual damages at the rate of $151 per month up to the date of this filing.

V.
Causes of Action

24. FOR A FIRST CAUSE OF ACTION, Plaintiffs state that the actions of the Defendants by their interpretation of 42 U.S.C.A. § 606(a) and the Employees Manual violate Plaintiffs' rights to due process and equal protection guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and outlined specifically in *Stanley v. Illinois*, ____ U.S. ____, 92 S.Ct. 1208 (1972), in that said actions

constitute an invalid conclusive presumption that Plaintiffs are not needy persons with children.

25. FOR A SECOND CAUSE OF ACTION, Plaintiffs state that the actions of Defendants and the Defendants' interpretation of 42 U.S.C.A. § 606(a) and the Employees Manual, violate the Plaintiffs' rights to equal protection of the laws under the Fourteenth Amendment to the United States Constitution in that:

A. They deny AFDC eligibility to an applicant who is expecting a child and the fact of pregnancy has been determined by medical diagnosis;

B. This creates two classes of persons with regard to eligibility for AFDC eligibility;

C. The first class consists of needy women who have given birth to a child;

D. The second class consists of needy women who have had their pregnancy determined by medical diagnosis but who have not yet given birth to their child;

E. The first class of women are eligible for AFDC payments while the second class is not; and

F. There is no adequate governmental justification for this classification.

26. FOR A THIRD CAUSE OF ACTION, Plaintiffs state that actions of the Defendants violate the Supremacy Clause and federal statutory law according to the rules of construction laid down by the United States Supreme Court in *King v. Smith*, 392 U.S. 390 (1968); *Townsend v. Swank*, 404 U.S. 282 (1971); *Carleson v. Remillard*, ____ U.S. ____, 92 S.Ct. 1932 (1972), in that they have restricted eligibility for AFDC benefits to exclude persons eligible under federal statutes and regulations, namely 42 U.S.C.A. § 606(a) and 45 C.F.R. § 233.90(c)(2)(ii).

VI.
Prayer for Relief

WHEREFORE, Plaintiffs respectfully pray that the Court:

A. Assume jurisdiction of this cause, and promptly set this case down for hearing;

B. Pending a hearing and determination by this Court, grant a Temporary Restraining Order pursuant to Rule 65 of the Federal Rules of Civil Procedure restraining Defendants, their successors in office, agents and employees, and all other persons in active concert and participation with them, from continuing to cause irreparable harm to the Plaintiffs by refusing to grant AFDC assistance in the amount to which Plaintiffs are entitled on the ground that Plaintiffs' unborn children are not "dependent children";

C. Enter a declaratory judgment pursuant to 28 U.S.C.A. §§ 2201-

2202 and Rules 54, 57 and 58 of the Federal Rules of Civil Procedure declaring Defendants' actions in their interpretation of the Employees Manual to be invalid on the grounds that they violate 42 U.S.C.A. § 606(a), the Supremacy Clause and the Fifth and Fourteenth Amendments to the Constitution of the United States;

D. Enter a preliminary and permanent injunction, pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining Defendants and their successors in office, agents and employees, and all other persons in active concert and participation with them from refusing to grant Plaintiffs AFDC assistance in the amounts to which they are entitled on the grounds that the Plaintiffs' unborn children do not constitute "dependent children";

E. Grant the Plaintiffs each monetary damages in the amount of $151 per month, for assistance wrongfully withheld;

F. Pursuant to Rule 54(d) of the Federal Rules of Civil Procedure allow Plaintiffs costs herein;

G. Grant additional or alternative relief as may seem to this Court to be just, proper, and equitable.

Respectfully submitted,

s/ Plaintiffs' Counsel

(Certificate of service omitted in printing)

On the 16th day of May, 1973, the following ORDER was filed in the United States District Court, Southern District of Iowa:

JANE DOE and JOAN ROE, *Plaintiffs,* *v.* KEVIN J. BURNS, et al., *Defendants.*	ORDER

The Court has carefully reviewed the Complaint submitted on behalf of Jane Doe and Joan Roe and finds that the issues contained therein are identical to those in *Alcala v. Gillman*, Civil No. 73-86-2, and that Jane Doe and Joan Roe are probably members of the class on whose behalf Linda Alcala is suing in Civil No. 73-86-2.

Accordingly, IT IS ORDERED that the cause of action on behalf of Jane Doe and Joan Roe is consolidated for purposes of all further

proceedings relating to temporary injunctive relief or permanent injunctive relief with *Alcala v. Gillman*, Civil No. 73-86-2.

Dated: May 15, 1973.

s/ William C. Hanson

United States District Judge

On the 29th day of May, 1973, the following AMENDMENT TO ANSWER was filed in *Alcala* in the United States District Court, Southern District of Iowa:

(Title omitted in printing)

COME NOW the Defendants and Amends its Answer by adding the following paragraphs to its Answer, to wit:

1. That Plaintiff has failed to state the claim upon which relief can be granted;

2. That the Plaintiff in her Petition failed to present or state a substantial Federal question;

3. That there is other public relief available to Plaintiff to provide her with her nutritional needs and other necessities for her maintenance and health requirements;

4. That the doctrine of abstension is applicable.

WHEREFORE, Defendants PRAY that Plaintiff's Petition be dismissed at Plaintiff's cost.

s/ Defendants' Counsel

(Certificate of service omitted in printing)

On the 29th day of May, 1973, the following ANSWER was filed in *Doe and Roe* in the United States District Court, Southern District of Iowa:

(Title omitted in printing)

COME NOW the Defendants and for Answer to Plaintiffs' Complaint, state the following:

1. Defendants admit the allegations contained in paragraphs one (1), five (5), six (6), seven (7), eight (8), nine (9), ten (10), twelve (12), thirteen (13), fourteen (14), sixteen (16), eighteen (18), nineteen (19), twenty (20), and twenty-one (21);

2. Defendants also deny the allegations contained in paragraphs two (2), three (3), four (4), eleven (11), seventeen (17), twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25) (a), twenty-five (25) (b), twenty-five (25) (c), twenty-five (25) (d), twenty-five (25) (e),

twenty-five (25) (f), and twenty-six (26);

3. Defendants are without sufficient knowledge as to the truth of the allegations contained in Paragraph fifteen (15) of Plaintiffs' Complaint and therefore deny the same.

4. That by way of affirmative defense, Defendants state that Plaintiffs have failed to state a claim upon which relief can be granted;

5. That by way of further affirmative defense, Defendants state that the Plaintiffs in their Petition failed to present or state a substantial Federal question;

6. That by way of further affirmative defense, Defendants state that there is other public relief available to Plaintiffs to provide them with their nutritional needs and other necessities for their maintenance and health requirements.

7. That the doctrine of abstention is applicable.

WHEREFORE, Defendants PRAY that Plaintiffs' Petition be dismissed at Plaintiffs' cost.

s/ Defendants' Counsel

(Certificate of service omitted in printing)

The evidence was stipulated between the parties as follows:

Plaintiffs' Exhibit 1, filed on the 29th day of May, 1973 in the United States District Court, Southern District of Iowa, reads as follows:

(Title omitted in printing)

The parties to the above-entitled action, by and through their attorneys, hereby agree and stipulate to the following:

1. That Plaintiff is twenty (20) years old and is unmarried.

2. Plaintiff is pregnant and her child is due in July, 1973.

3. If her child were born, Plaintiff would be eligible for AFDC assistance under her present financial condition.

4. Plaintiff has no current income and no savings.

s/Plaintiffs' Counsel s/ Defendants' Counsel

Over Defendants' objection as to relevancy and materiality, it was stipulated that if Dr. Roy M. Pitkin were called to testify he would testify as in Plaintiffs' Exhibit 2 which was filed on the 29th day of May, 1973 in the United States District Court, Southern District of Iowa:

(Title omitted in printing)

Come Now the parties to this action, by and through their attorneys, and stipulate that if Roy M. Pitkin, M.D. were called to testify

in the above-entitled action, his testimony would be as follows:

1. My name is Roy M. Pitkin.

2. I reside at 517 Templin Park, Iowa City, Iowa.

3. I am currently employed as a Professor in the Department of Obstetrics and Gynecology, College of Medicine, University of Iowa, Iowa City, Iowa.

4. My undergraduate education was as follows:

a. B.A. (with highest distinction), University of Iowa, 1956.

5. I received my M.D. Degree from the University of Iowa in June, 1959.

6. I completed my internship at King County Hospital, Seattle, Washington, 1960; and my residency at the University of Iowa Hospitals, 1963.

7. I have been employed in my present capacity since September, 1968.

8. During my medical education and work experience, I have studied various areas associated with the development of the human fetus.

9. I hold the following positions:

a. Chairman, Committee on Nutrition, American College of Obstetricians and Gynecologists.

b. Member, Committee on Maternal Nutrition, National Academy of Sciences - National Research Council.

10. I am in full agreement with the "Policy Statement of Nutrition and Pregnancy" passed by the Executive Board of the American College of Obstetricians and Gynecologists on December 1, 1972.

11. In my opinion, a woman's nutrition during pregnancy is an important determinant of the health and condition of her child; if nutrition is inadequate, not only is her own health imperiled, but there is a substantial likelihood that the health of her child may be affected adversely, as a result of said inadequate nutrition.

12. Dietary intake during pregnancy (particularly calories and protein) is a major determinant of the weight of the child at birth.

13. Weight at birth is a strong indicator of subsequent course of the child, in terms of both survival and development.

14. Besides nutrition during pregnancy, a number of other factors affect the health of the child. These factors include the child's genetic make-up, the general health of the mother prior to and during pregnancy, and the presence or absence of complications of pregnancy.

15. A woman's pre-pregnancy nutritional status is an important determinant of the outcome of pregnancy. However, inadequate nutrition during pregnancy is likely to have an adverse effect on the health of the child, even if maternal health was good before pregnancy.

In addition, optimal nutrition during pregnancy in a woman of poor pre-pregnancy nutritional background may serve to ameliorate the negative effects of previous poor nutrition.

The parties further agree that this Stipulation is not an agreemtnt that this stipulated testimony is admissible into evidence and Defendants object to the admission of the same on the grounds of materiality and relevancy.

s/ Plaintiffs' Counsel s/ Defendants' Counsel

[The following was attached to the preceeding stipulation.]

POLICY STATEMENT ON NUTRITION AND PREGNANCY AMERICAN COLLEGE OF OBSTETRICIANS & GYNECOLOGISTS

A woman's nutritional status before, during, and after pregnancy contributes to a significant degree to the well being of both herself and her infant. Therefore, what a woman consumes before she conceives and while she carries the fetus is of vital importance to the health of succeeding generations.

Nutritional assessment and advice are essential components of good antepartal care. The obstetrician-gynecologist, as leader of the obstetric-gynecologic health team, is responsible for including these in the care of all pregnant patients under his supervision. He may do this personnally or by insuring that qualified members of his team do so. Ideally, nutritional assessment should be made before conception. Failing that, it should be accomplished at the first antepartal visit. It should be repeated at regular intervals during the following pregnancy. A basic technique of nutritional assessment is to obtain and analyze a 24 or 48 hour diet history. This should be supplemented by clinical evaluation of possible nutritional deficiencies and, where indicated, appropriate laboratory tests.

Nutritional advice to the pregnant woman depends upon knowledge of sound nutritional principles. Although the components of optimal maternal diet have not been determined precisely, several important principles may be stated:

1. Adequate intake of protein, particularly protein from animal sources, should be insured.
2. Caloric intake approximately 10 per cent above non-pregnant requirements in advisable.
3. Weight gain during pregnancy should not be restricted unduly, nor should weight reduction normally be attempted. The average weight gain in normal pregnancy is 10 to 12 kg (22 to 27 lbs).

4. Essential nutritional elements (such as sodium) should not be restricted during normal pregnancy.

5. Dietary supplements of iron and iron-containing foods are indicated during pregnancy. Other dietary supplements, such as vitamins or additional sources, may be helpful where deficiencies in nutritional status are determined.

Nutritional advice should be continued during the puerperium. Restriction of dietary intake should not be advised during the early postpartal course nor for the lactating mother.

In implementing these principles of good nutrition in obstetrics, the obstetrician-gynecologist may utilize written or pictorial materials. However, the most important factor in persuading a patient to establish sound nutritional habits before, during, and after pregnancy is continued personal encouragement by the obstetrician-gynecologist and the members of his health team, with emphasis on positive rather than negative aspects of nutrition.

Passed by the Executive Board, December 1, 1972

Defendants' Exhibit A, which was filed on the 29th day of May, 1973, in the United States District Court, Southern District of Iowa, reads as follows:

(Title omitted in printing)

STATE OF IOWA

ss.

COUNTY OF POLK

I, Vernon W. Woodard, being first duly sworn on oath, state that I am Assistant Director of Food Stamp Program for the Iowa Department of Social Services, State of Iowa; that as such I am in charge of the official documents in this office;

That attached hereto, marked Exhibit A and by this reference made a part hereof consisting of 14 pages, are Xerox copies of the Federal Rules and Regulations as published in the Federal Register of January 18, 1969 (34 F.R. 807) together with instructions by the Federal agencies authorized to administer such programs in the State of Iowa;

That also attached hereto, marked Exhibit B and by this reference made a part hereof consisting of 7 pages, is a contract between the Iowa Department of Social Services and an agency of the Office of Economic Opportunities (O.E.O.) which administers this program in Scott County, Iowa; that said contract dated December 17, 1969 is currently in full force and effect and is part of the official records of the Iowa Department of Social Services;

That also attached hereto, marked Exhibit C and by this reference made a part hereof consisting of 3 pages, is a copy of the Rules and Regulations concerning the Food Stamp Program as published in the

Federal Register of July 29, 1971 (Vol. 36, No. 146); that said Food Stamp Program is in effect in every county in the State of Iowa including Scott County, Iowa, and is administered by the Iowa Department of Social Services through the county departments of social services;

That if I were called to testify in the above captioned matter, that my testimony would be as stated in this Affidavit.

s/ Vernon W. Woodard

(Duly verified)

[Attachment not printed but is in the Court file and either party may refer thereto by stipulation of parties.]

On the 1st day of June, 1973, filed as Exhibit "C" to Defendants' Supplemental Brief in the United States District Court, Southern District of Iowa, the official published and circulated manual material of the Iowa Department of Social Services, of which the Court may take judicial notice, which shows items considered in computing an ADC grant, is as follows:

EMPLOYEES' MANUAL V-Appendix - 14f

CHART FOR DETERMINING INCOME IN KIND: ADC

(All figures are on a per person basis.)

Number Of Persons Whose Needs Are Included In Computation Of Grant	* Shelter	* Utilities	* Supplies & Replacements	* Food	* Clothing	* Personal Care & Supplies	* Medicine Cabinet Supplies	* Communications
1	28.28	15.38	6.63	26.26	7.76	4.81	.92	9.44
2	19.43 x 2 etc.	9.86	3.74	24.07	7.76	4.81	.92	4.72
3	16.50 x 3 etc.	7.85	2.79	22.98	7.76	4.81	.92	3.14
4	14.17 x 4 etc.	6.66	2.31	21.89	7.76	4.81	.92	2.37
5	12.02 x 5 etc.	5.67	2.01	20.78	7.76	4.81	.92	1.89
6	10.60 x 6 etc.	4.92	1.82	19.69	7.76	4.81	.92	1.57
7	9.50 x 7 etc.	4.36	1.69	19.69	7.76	4.81	.92	1.35
8	8.84 x 8 etc.	3.94	1.58	19.69	7.76	4.81	.92	1.18
9 or more	8.12 x 9 or more etc.	3.63	1.50	19.69	7.76	4.81	.92	1.04

*amounts in these columns are to be multiplied by the numbers preceding each line

Iowa Department of Social Services Revised July 29, 1970

On the 31st day of July, 1973, the following FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT was filed by the United States District Court, Southern District of Iowa, and is published in 362 F.Supp. 180:

LINDA ALCALA, Individually and on behalf of all other persons similarly situated,

Plaintiff,

vs.

KEVIN J. BURNS, Individually and in his capacity as Acting Commissioner of the State of Iowa Department of Social Services; and MICHAEL RYAN, Individually and in his capacity as Director of the Scott County Department of Social Services,

Defendants.

Civil No. 73-86-2

JANE DOE and JOAN ROE,

Plaintiffs,

vs.

KEVIN J. BURNS, Individually and in his capacity as Acting Commissioner of the State of Iowa Department of Social Services; and MICHAEL RYAN, Individually and in his capacity as Director of the Scott County Department of Social Services,

Defendants.

Civil No. 73-110-2

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT.

In these consolidated causes of action, brought pursuant to Title 42 U.S.C., Section 1983, the plaintiffs ask this Court to declare invalid, and enjoin defendants from continuing, acts by which defendants deny A.F.D.C. assistance to pregnant mothers and their unborn children. Defendants have denied A.F.D.C. assistance to these plaintiffs pursuant to their interpretation of an Iowa Department of Social Services regulation, such interpretation being that A.F.D.C. assistance is not available to otherwise eligible pregnant women whose children have not been born. The defendants claim that neigher the Federal statutes governing A.F.D.C. nor the Iowa Regulations contemplate A.F.D.C. payments for an unborn child.

On April 4, 1973, this Court entered a temporary restraining order enjoining the defendants from denying A.F.D.C. payments to Linda Alcala on the sole basis that her child was not yet born. On May 16, 1973, a similar action was filed by plaintiffs Jane Doe and Joan Roe. This cause of action was consolidated with *Alcala v. Gillman* and a temporary restraining order was issued restraining the defendants from denying A.F.D.C. payments to these plaintiffs on the sole basis that their children are not yet born.

On May 29, 1973, a trial was held to determine the issues in the above two causes of action. The following will constitute the Findings of Fact, Conclusions of Law, and Order for Judgment.

Jurisdiction of the Court is invoked pursuant to Title 42 U.S.C., Section 1983, Title 28 U.S.C., Section 2201, and Title 28 U.S.C., Section 1343.

Findings of Fact

1. The plaintiffs are unmarried pregnant women with unborn children, are currently unemployed, and have no savings.

2. The plaintiffs applied to the Scott County Department of Social Services for A.F.D.C. assistance, but were denied such assistance because of the Scott County Department's interpretation of Section V, Chapter 5 of the Iowa Department of Social Services Manual. As interpreted by the defendants, this provision does not provide for A.F.D.C. assistance to an otherwise eligible pregnant woman whose child is not yet born.

3. The plaintiffs met all eligibility requirements for A.F.D.C. assistance except that their children were not yet born.

4. Stipulated testimony of Dr. Roy M. Pitkin, obstetrician and gynecologist, (Plaintiffs' Exhibit 2) stated that the nutrition of a mother during pregnancy is an important determinant of the health and condition of the child and that there is a substantial likelihood that the health of a child may be adversely affected as a result of the pregnant mother's inadequate nutrition. He also stated that proper medical attention during pregnancy is important to protect the mother's health, which in turn affects the health and development of the child.

5. The defendants in this cause of action are Kevin J. Burns, Acting Director of the State of Iowa Department of Social Services, and Michael Ryan, Director of the Scott County Department of Social Services.

6. The Court finds that this is an appropriate class action under Rule 23 of the Federal Rules of Civil Procedure.

Conclusions of Law

The plaintiffs assert their right to A.F.D.C. payments on three theories. First, they allege that the defendants' interpretation of Iowa's A.F.D.C. provisions, which deny payments to otherwise eligible pregnant women whose children have not been born, conflicts with eligibility

provisions of Title 42 U.S.C., Section 606(a), and thus is invalid and unconstitutional under the Supremacy Clause. The second two theories allege that the actions of the defendants in denying A.F.D.C. payments and their interpretation of Title 42 U.S.C., Section 606(a), and the Employees Manual violate the plaintiffs' right to the due process and equal protection under the Fifth and Fourteenth Amendments to the United States Constitution. Because of the Court's holding upon the Supremacy Clause theory, it will not be necessary to reach the "equal protection" and "due process" arguments.

The Supremacy Clause Argument.

The plaintiffs claim that the term "dependent child" as defined in Section 406(a) of the Social Security Act, Title 42 U.S.C., Section 606(a)[1] encompasses an unborn child for purposes of determining eligibility for A.F.D.C. payments. They further argue that since a mother with an unborn child is eligible under the Federal statute, the states cannot pursue more restrictive eligibility requirements lest they be in violation of the Supremacy Clause.

The law concerning eligibility requirements for A.F.D.C. has been dealt with by a long line of recent Supreme Court decisions. *King v. Smith*, 392 U.S. 309 (1968); *Wyman v. James*, 400 U.S. 309 (1971); *Townsend v. Swank*, 404 U.S. 282 (1971); *Lewis v. Martin*, 397 U.S. 552 (1970); *Carleson v. Remillard*, 406 U.S. 598 (1972); *Shapiro v. Thompson*, 394 U.S. 618 (1969); *Dandridge v. Williams*, 397 U.S. 471 (1970).

Several propositions relevant to these causes of action become clear from the law stated in these opinions. *King v. Smith, supra*, in interpreting the effect of Section 402(a) of the Social Security Act, Title 42 U.S.C., Section 602(a),[2] held that the Social Security Act determined eligibility standards for A.F.D.C. and that state provisions which had the effect of narrowing those eligibility standards were to that extent invalid because of the Supremacy Clause.

Townsend v. Swank, supra, at 286 in interpreting the dictates of *King v. Smith* stated:

> "Thus *King v. Smith* established that, at least in the absence of Congressional authorization for the exclusion clearly evidenced from the Social Security Act or its legislative history, a state eligibility standard that excludes persons eligible for assistance

[1]This Section provides "(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from home, or physical or mental incapacity of a parent, and who is living with his father, mother . . . and (2) who is (A) under the age of eighteen. . . ."

[2]This section provides that: "A State plan for aid and services to needy families with children must . . . (10) provide, effective July 1, 1951, that all individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness **to all eligible individuals.** . . ." (Emphasis added)

> under federal AFDC standards violates the Social Security Act and is therefore invalid under the Supremacy Clause. We recognize that HEW regulations seem to imply that states may to some extent vary eligibility requirements from federal standards. However, the principle that accords substantial weight to interpretation of a statute by the department entrusted with its administration is inapplicable insofar as those regulations are inconsistent with the requirement of Section 402(a)(10) that aid be furnished to **all eligible individuals."**

Carleson v. Remillard again reiterated the same proposition as the aforementioned cases in invalidating a California regulation which denied A.F.D.C. payments to otherwise eligible individuals on the basis that absence from home for military service did not constitute "absence from home" for purposes of satisfying A.F.D.C. eligibility requirements.

From *King*, *Townsend*, and *Remillard*, the following related principles have been set forth by the Supreme Court:

(1) The states may not impose more restrictive eligibility conditions for receiving A.F.D.C. than those set out in the Social Security Act;

(2) In order to exclude an applicant who would have been covered under the Social Security Act, the state must rely upon legislative history or statutory language "clearly evidencing" Congressional intent to allow the exclusion of the applicant;

(3) HEW regulations purporting to make eligibility for certain groups of applicants optional with the states are of no effect in the absence of Congressional intent to allow such exclusions.

Since there appears to be no convincing argument by the defendants that there is a specific Congressional exclusion or intent to allow the exclusion of unborn children and the Court can find no such intent, the Court's inquiry must be directed to whether the term "dependent child" in Title 42 U.S.C., Section 606(a) **includes** coverage for the "unborn child." If such coverage is in fact intended by the Social Security Act, the Court would be compelled under the precedents cited above to find for the plaintiffs.

The plaintiffs argue that the Social Security Act contemplates coverage for the "unborn child" when it provides coverage for a "dependent child." It is first contended that the plain language of the statute implies they are to be included and that there is no indication in the statutory language that mothers with unborn children are to be excluded from coverage. They point to the definition by Webster's New International Dictionary (Second Edition Unabridged) which defines "child" as: "An unborn or recently born human being; fetus; infant; baby. . . ." The defendants argue just as ardently that the clear language of the Social Security Act constantly refers to children in being and that nowhere is "unborn child" referred to. The defendants argue that the customary meaning of the word "child" is that of a born person.

In any event, the Court does not find this venture into the plain

meaning of the term "dependent child" extremely fruitful. It is obvious that the "plain language" of the statute is not as plain as both parties contend and is surely not conclusive for the plaintiffs or the defendants. It is ascertainable, however, that an "unborn child" is not specifically excluded by the language of the Act.

Given this ambiguity in the statute, the Congressional intent becomes more important and is a more fruitful inquiry. Title 42 U.S.C., Section 601 authorizes funds:

> "For the purpose of encouraging the care of dependent children in their homes . . . by enabling each state to furnish financial assistance and rehabilitation and other services as far as practicable under the conditions in each State, to needy dependent children and the parents or relatives with whom they are living to help maintain the strengthen family life and to help such parents . . . to attain self-support and personal independence consistent with the maintenance of continuing prenatal* care and protection. . . ."
>
> (Emphasis added).

Inclusion of the "unborn child" is consistent with the purposes of the Act above stated. The stipulated testimony of Dr. Roy Pitkin clearly states the additional needs of the child and mother during this prenatal period and the serious consequences that flow to the family if the nutritional and medical needs of the child are not met during this prenatal period. Meeting of these family needs is consistent with the purposes of the A.F.D.C. program stated above. As stated in *Carleson v. Remillard, supra,* at 604:

> "We cannot assume here, anymore than we could in *King v. Smith, supra,* that while Congress 'intended to provide programs for the economic security and protection of *all* children,' it also "intended arbitrarily to leave one class of destitute children entirely without meaningful protection."
> 392 U.S., at 330.

The term "dependent child" is broad enough to encompass an "unborn child" and the coverage for "unborn children" is consistent with the purposes of the Social Security Act. No credible argument can be made that Congress intended to exclude "unborn children" from coverage under this Act. Therefore the Court concludes that coverage for "unborn children" is contemplated by the Social Security Act.

This conclusion is strengthened by a reading of the relevant regulations of the Department of Health, Education and Welfare. The Code of Federal Regulations, 45 C.F.R., Section 233.90 provides that:

> "(c)(2) Federal financial participation is available in:
> . . .

*Word "prenatal" corrected as "parental" in Order Clarifying Misprint in Court's Order of July 31, 1973, filed in the United States District Court, Southern District of Iowa, on August 24, 1973 [p. 28 hereof], and published in corrected form at 362 F.Supp. 180 (S.D. Iowa 1973).

> (ii) Payments with respect to an unborn child when the fact of pregnancy has been determined by medical diagnosis. . . ."

Since 1946 it has been the policy of HEW that payments are authorized on behalf of "unborn children." The position of HEW, as stated in their amicus brief filed by the defendants, is that Section 233.90(c)(2) is an optional program to the states and that just because these regulations **allow** coverage of unborn children does not dictate that coverage is required.

If, however, this so-called optional program of HEW is a valid program, the power to promulgate this Regulation would flow from the Social Security Act. As stated in the defendants' Brief on page 7:

> "However, it is equally clear that such regulations may not go beyond the limits of the Act or law on which such regulations are based. *Townsend v. Swank*, 404 U.S. 282 (1971)."

The fact that HEW has allowed payments to "unborn children" since 1946 under this Act and the fact that Congress has acquiesced in this position is a most convincing argument that the Social Security Act encompasses eligibility for the parent with an "unborn child." The Court again concludes that "unborn children" are eligible for A.F.D.C. benefits under the Social Security Act and that under the precedents of *King, Townsend* and *Remillard* and the Eighth Circuit cases of *Rosen v. Hursh*, 464 F.2d 731 (1972) and *Doe v. Gillman*, No. 72-1605 (8th Cir., June 6, 1973), the defendants cannot enforce more strict eligibility requirements than those requirements in the Federal statute.

> Lower Court Opinions Considering the Same Question Presented to this Court.

There are two United District Court cases reaching conflicting decisions in which the issue was whether a state regulation denying A.F.D.C. assistance to pregnant women and their unborn children solely on the basis that the children are unborn is inconsistent with the Social Security Act and therefore invalid under the Supremacy Clause. *Parks v. Harden*, 41 U.S.L.W. 2391 (N.D. Ga., Jan. 4, 1973) denied A.F.D.C. payments to the plaintiff. *Wilson v. Weaver*, No. 72-C-1960 (N.D. Ill., Dec. 26, 1972) (Order on preliminary injunction) found on the basis of the Supremacy Clause that the plaintiff in that cause of action was entitled to receive A.F.D.C. payments even though the child was not yet born.

The determining factor in the differing results that were reached is that Judge Smith in *Parks v. Harden*, when he searched the statute and legislative history, was looking for a very specific inclusion of "unborn children" which he did not find. Therefore he concluded that unborn children were not covered. This Court believes the proper approach is to look at the term "dependent child" and see whether it could be broad enough to include coverage for the "unborn child" in light of the overall purpose of the Act. This Court concludes, as did *Wilson v. Weaver*, that the term "dependent child" is broad enough to encompass an "unborn child" and that an interpretation of the Federal eligibility requirements

which includes coverage for "unborn children" is consistent with, and in furtherance of, the overall purpose of the A.F.D.C. provisions of the Social Security Act.

Parks v. Harden also accepted HEW's position that the "unborn children" program under their regulation, Title 45 C.F.R., Section 233.90(c)(2)(ii), is optional even given the language of *King, Townsend* and *Remillard*. The *Parks* opinion did not explain from where the authority for a so-called optional program was derived if such coverage was not comtemplated by the Social Security Act. The *Wilson v. Weaver* court found that the HEW regulation suppported the proposition that coverage for "unborn children" was contemplated by the Social Security Act and correctly concluded under the *King, Townsend* and *Remillard* cases that these federal eligibility standards can not be restricted by a State under the guise that the program is optional.

The Court now directs its attention to an unpersuasive but intriguing argument that asserting that an "unborn child" is a "dependent child" within the meaning of the Social Security Act is in total conflict with the abortion case, *Roe v. Wade*, 410 U.S. 113 (1973) which held that an "unborn child" is not a person within the protection of the Fourteenth Amendment. In this lawsuit the Court is determining whether Congress intended to provide for a mother and her "unborn child" under the A.F.D.C. provisions. The fact that a child is not protected as a person under the United States Constitution is not relevant to the above inquiry. The payments are made to the family and not the "unborn child" and the mother is asserting her right to payments.

The Abstention Argument.

The defendants argue that this Court should stay its hand pending the determination of these issues by the Iowa Court. *Reetz v. Bozanich*, 397 U.S. 82 (1970); *Department of Social Services of Iowa v. Dimery*, 398 U.S. 322 (1970) and *Bascom and Hightower v. Perry*, Civil No. 72-C-524-EC are cited as authority for this proposition. In this case, however, we are determining the applicability of federal law. There is no determination of a State law involved. Abstention is not appropriate in these circumstances.

Order for Judgment

The final matter for this Court to determine is the relief to be granted to the plaintiffs and their class. The Court will grant the declaratory and injunctive relief prayed for, but will not allow the claims for retroactive payments wrongfully withheld. In *Doe v. Gillman*, No. 72-1605 (8th Cir., June 6, 1973), the Eighth Circuit refused to grant retroactive payments in circumstances involving wrongfully withheld A.F.D.C. payments on the basis that Section 53.16(217) of the 1973 Iowa Departmental Rules provided for retroactive payments and was thus the process that should be taken by the aggrieved plaintiffs.

> "When the hearing decision if favorable to the claimant, or when the agency decides in favor of a claimant prior to the hearing, corrective payments, retroactive to the date of incorrect action, **shall** be made."
> (Emphasis added).

Once the rights of these parties have been determined, this Court cannot presume that the Iowa officials will not follow their own designated procedure for awarding relief.

IT IS ORDERED that the above shall constitute the Findings of Fact, Conclusions of Law and Order for Judgment in the above entitled cause of action.

Dated: July 31, 1973.

BY THE COURT:

s/ William C. Hanson

Chief Judge,
Southern District of Iowa

On the 31st day of July, 1973, the following JUDGMENT was filed in the United States District Court, Southern District of Iowa:

LINDA ALCALA, Individually and on behalf of all other persons similarly situated, *Plaintiff,* *vs.* KEVIN J. BURNS, Individually and in his capacity as Acting Commissioner of the State of Iowa Department of Social Services; and MICHAEL RYAN, Individually and in his capacity as Director of the Scott County Department of Social Services, *Defendants.*	Civil No. 73-86-2
JANE DOE and JOAN ROE, *Plaintiffs,* *vs.* KEVIN J. BURNS, Individually and in his capacity as Acting Commissioner of the State of Iowa Department of Social Services; and MICHAEL RYAN, Individually and in his capacity as Director of the Scott County Department of Social Services, *Defendants.*	Civil No. 73-110-2 JUDGMENT.

In accordance with the Findings of Fact, Conclusions of Law, and Order for Judgment filed contemporaneously with this Order,

IT IS ORDERED, ADJUDGED AND DECREED that the above causes of action are class actions on behalf of expectant mothers who are denied A.F.D.C. payments by reason of the defendants' interpretation of Title 42 U.S.C., Section 606(a) so as to not include an unborn child within the term "dependent child."

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendants' actions in denying A.F.D.C. payments to these plaintiffs and the defendants' interpretation of their Employees Manual and Regulations to exclude from A.F.D.C. eligibility to otherwise eligible pregnant women on the basis that their child is not yet born, are invalid on the grounds that they conflict with Title 42 U.S.C., Section 606(a) and thus violate the Supremacy Clause of the United States Constitution.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendants are permanently enjoined from denying A.F.D.C. payments to a pregnant woman who is otherwise eligible for payments, on the sole basis that her child is not yet born.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the portion of the plaintiffs' complaints seeking retroactive payments is dismissed.

Dated: July 31, 1973.

s/ William C. Hanson

Chief Judge
Southern District of Iowa

On the 2nd day of August, 1973, the following NOTICE OF APPEAL was filed in the United States District Court, Southern District of Iowa:

(Title omitted in printing)

Notice is hereby given that Kevin J. Burns and Michael Ryan, Defendants named above, hereby appeal to the United States Court of Appeals for the Eighth Circuit from the Order and Judgment issued in the above-named consolidated cases dated the 31st day of July, 1973, finding that the Defendants' interpretation of their Employees' Manual and Regulations conflict with Title 42 U.S.C. § 606(a) and thus violate the Supremacy Clause of the United States Constitution.

s/ Defendants' Counsel

(Certificate of service omitted in printing)

On the 9th day of August, 1973, the following RULING ON MOTION FOR STAY OF JUDGMENT was filed in the United States District Court, Southern District of Iowa:

LINDA ALCALA, Individually and on behalf of all other persons similarly situated,	)	
Plaintiff,	)	Civil No. 73-86-2
vs.	)	
KEVIN J. BURNS, et al.,	)	
Defendants.	)	
JANE DOE and JOAN ROE,	)	
Plaintiffs,	)	Civil No. 73-110-2
vs.	)	
KEVIN J. BURNS, et al.,	)	
Defendants.	)	

Ruling on Motion For Stay of Judgment

Application for stay of judgment pursuant to Rule 62(c) of the Federal Rules of Civil Procedure has been made in this cause. Careful attention has been given to the reasons urged on behalf of the application.

The Court notes the resistance to the application by the defendants.

A careful analysis relating to the principles for the granting of such an application clearly indicates that the application should be denied.

No one doubts that the moving party here in order to receive relief must show: (1) That it has a strong possibility and must make a strong showing that that party is likely to succeed on the merits on appeal; (2) That the applicant must establish that unless a stay order is granted he will suffer irreparable injury; (3) That the applicant must show that no substantial harm will come to the other interested parties, and (4) That if a stay would be granted it would not harm the public interest.

From the proof offered in this case in its main submission and from the findings made prior hereto, and from the subsequent disclosure to the Court that perhaps not many would be involved, and from a complete look as a balancing of all the factors hereinbefore mentioned, the Court can reach no other conclusion than that the application should be denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the application for stay of judgment be and the same is hereby denied.

s/ William C. Hanson

William C. Hanson, Chief Judge
United States District Court

On the 24th day of August, 1973, the following ORDER CLARIFYING MISPRINT IN COURT'S ORDER OF JULY 31, 1973 was filed in the United States District Court, Southern District of Iowa:

LINDA ALCALA, Individually and on behalf of all other persons similarly situated. *Plaintiff,* *vs.* KEVIN J. BURNS, Individually and in his capacity as Acting Commissioner of the State of Iowa Department of Social Services; and MICHAEL RYAN, Individually and in his capacity as Director of the Scott County Department of Social Services. *Defendants.*	Civil No. 73-86-2
JANE DOE and JOAN ROE, *Plaintiffs,* *vs.* KEVIN J. BURNS, Individually and in his capacity as Acting Commissioner of the State of Iowa Department of Social Services; and MICHAEL RYAN, Individually and in his capacity as Director of the Scott County Department of Social Services. *Defendants.*	Civil No. 73-110-2 ORDER CLARIFYING MISPRINT IN COURT'S ORDER OF JULY 31, 1973.

The Court has before it a Motion for Clarification of Findings of Fact, Conclusions of Law and Order for Judgment filed August 24, 1973.

On page 6 of the Court's Order dated July 31, 1973, the Court quoted from Title 42 U.S.C., Section 601 as follows:

> "For the purpose of encouraging the care of dependent children in their homes . . . by enabling each state to furnish financial assistance and rehabilitation and other services as far as practicable under the conditions in each State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents . . . to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of *continuing prenatal care and protection*. . . ." (Emphasis added).

In the emphasized portion, a typographical error was made by typing "prenatal" instead of "parental." The Court now corrects that wording to read parental. This typographical error in no way affected the Conclusions of Law in this section or the ultimate outcome of this case. As stated in this section, the purpose of the A.F.D.C. program is to provide for "the maintenance of continuing *parental* care and protection."

IT IS ORDERED that the typographical error on page 6 of the Court's Findings of Fact, Conclusions of Law and Order for Judgment is amended to strike the word "prenatal" and add the word Parental. This change is consistent with the actual wording of Title 42 U.S.C., Section 601.

Dated: August 24, 1973.

s/ William C. Hanson

William C. Hanson,
United States District Court

On the 7th day of September, 1973, the following ORDER was filed in the United States Court of Appeals for the Eighth Circuit:

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

73-1595 September Term, 1972

LINDA ALCALA, Individually and on behalf of all other persons similarly situated,

Appelle,

vs.

KEVIN J. BURNS, Individually and in his capacity as Commissioner of the State of Iowa, Department of Social Services; and MICHAEL RYAN, Individually and in his capacity as Director of the Scott County Department of Social Services,

Appellants.

JANE DOE and JOAN ROE,

Appellees,

vs.

KEVIN J. BURNS, Individually and in his capacity as Acting Commissioner of the State of Iowa Department of Social Services; and MICHAEL RYAN, Individually and in his capacity as Director of the Scott County Department of Social Service,

Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA

The court has carefully considered appellants' application for stay of judgment as amended together with appellees' memorandum in resistance to the application.

Being fully advised in the premises it is now here ordered that appellants' amended application for stay of judgment be, and it is hereby, denied in all respects.

September 7, 1973

On the 29th day of March, 1974, the OPINION of the United States Court of Appeals for the Eight Circuit was filed and is set out as Appendix A, Petition for Writ of Certiorari.

On the 29th day of March, 1974, the following JUDGEMENT was filed in the United States Court of Appeals for the Eighth Circuit:

JUDGMENT

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 73-1595 September Term, 1973

LINDA ALCALA, Individually and on behalf of all other persons similarly situated,

Appellee,

vs.

KEVIN J. BURNS, Individually and in his capacity as Commissioner of the State of Iowa, Department of Social Services; and MICHAEL RYAN, Individually and in his capacity as Director of the Scott County Department of Social Service,

Appellants.

JANE DOE and JOAN ROE,

Appellees,

vs.

KEVIN J. BURNS, Individually and in his capacity as Acting Commissioner of the State of Iowa Department of Social Services; and MICHAEL RYAN, Individually and in his capacity as Director of the Scott County Department of Social Services,

Appellants.

Appeal from the United States District Court for the Southern District of Iowa.

This cause came on to be heard on the record from the United States District Court for the Southern District of Iowa and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed.

March 29, 1974

On the 15th. day of April, 1974, the ORDER [staying the mandate] of the United States Court of Appeals for the Eighth Circuit was filed and is set out as Appendix B, Petition for Writ of Certiorari.